

105TH CONGRESS  
1ST SESSION

# S. 460

To amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals, to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home, to clarify the standards used for determining that certain individuals are not employees, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 18, 1997

Mr. BOND (for himself, Ms. SNOWE, Mr. NICKLES, Mr. BURNS, Mr. WARNER, Mr. FAIRCLOTH, Mr. MURKOWSKI, Mr. INHOFE, Mr. ENZI, Mr. HUTCHINSON, Mr. MACK, Ms. MIKULSKI, and Mr. GRAMS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals, to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home, to clarify the standards used for determining that certain individuals are not employees, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Home-Based Business  
3 Fairness Act of 1997”.

4 **SEC. 2. DEDUCTION FOR HEALTH INSURANCE COSTS OF**  
5 **SELF-EMPLOYED INDIVIDUALS INCREASED.**

6       (a) IN GENERAL.—Section 162(l)(1) of the Internal  
7 Revenue Code of 1986 (relating to special rules for health  
8 insurance costs of self-employed individuals) is amended  
9 to read as follows:

10           “(1) ALLOWANCE OF DEDUCTION.—In the case  
11 of an individual who is an employee within the  
12 meaning of section 401(c)(1), there shall be allowed  
13 as a deduction under this section an amount equal  
14 to the amount paid during the taxable year for in-  
15 surance which constitutes medical care for the tax-  
16 payer, the taxpayer’s spouse, and dependents.”

17       (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to taxable years beginning after  
19 December 31, 1996.

20 **SEC. 3. CLARIFICATION OF DEFINITION OF PRINCIPAL**  
21 **PLACE OF BUSINESS.**

22       (a) IN GENERAL.—Subsection (f) of section 280A of  
23 the Internal Revenue Code of 1986 (relating to definitions  
24 and special rules) is amended by redesignating paragraphs  
25 (2), (3), and (4) as paragraphs (3), (4), and (5), respec-

1 tively, and by inserting after paragraph (1) the following  
 2 new paragraph:

3 “(2) PRINCIPAL PLACE OF BUSINESS.—For  
 4 purposes of subsection (c), a home office shall in any  
 5 case qualify as the principal place of business if—

6 “(A) the office is the location where the  
 7 taxpayer’s essential administrative or manage-  
 8 ment activities are conducted on a regular and  
 9 systematic (and not incidental) basis by the tax-  
 10 payer, and

11 “(B) the office is necessary because the  
 12 taxpayer has no other location for the perform-  
 13 ance of the essential administrative or manage-  
 14 ment activities of the business.”

15 (b) EFFECTIVE DATE.—The amendment made by  
 16 this section shall apply to taxable years beginning after  
 17 December 31, 1996.

18 **SEC. 4. SAFE HARBOR FOR DETERMINING THAT CERTAIN**  
 19 **INDIVIDUALS ARE NOT EMPLOYEES.**

20 (a) IN GENERAL.—Chapter 25 of the Internal Reve-  
 21 nue Code of 1986 (relating to general provisions relating  
 22 to employment taxes) is amended by adding after section  
 23 3510 the following new section:

1 **“SEC. 3511. SAFE HARBOR FOR DETERMINING THAT CER-**  
2 **TAIN INDIVIDUALS ARE NOT EMPLOYEES.**

3 “(a) SAFE HARBOR.—

4 “(1) IN GENERAL.—For purposes of this title,  
5 if the requirements of subsections (b), (c), and (d),  
6 or the requirements of subsections (d) and (e), are  
7 met with respect to any service performed by any in-  
8 dividual, then with respect to such service—

9 “(A) the service provider shall not be  
10 treated as an employee,

11 “(B) the service recipient shall not be  
12 treated as an employer,

13 “(C) the payor shall not be treated as an  
14 employer, and

15 “(D) compensation paid or received for  
16 such service shall not be treated as paid or re-  
17 ceived with respect to employment.

18 “(2) AVAILABILITY OF SAFE HARBOR NOT TO  
19 LIMIT APPLICATION OF OTHER LAWS.—Nothing in  
20 this section shall be construed—

21 “(A) as limiting the ability of a service  
22 provider, service recipient, or payor to apply  
23 other applicable provisions of this title, section  
24 530 of the Revenue Act of 1978, or the com-  
25 mon law in determining whether an individual  
26 is not an employee, or

1                   “(B) as a prerequisite for the application  
2                   of any provision of law described in subpara-  
3                   graph (A).

4           “(b) SERVICE PROVIDER REQUIREMENTS WITH RE-  
5 GARD TO THE SERVICE RECIPIENT.—For purposes of sub-  
6 section (a), the requirements of this subsection are met  
7 if the service provider, in connection with performing the  
8 service—

9                   “(1) has the ability to realize a profit or loss,

10                   “(2) incurs unreimbursed expenses which are  
11           ordinary and necessary to the service provider’s in-  
12           dustry and which represent an amount at least equal  
13           to 2 percent of the service provider’s adjusted gross  
14           income attributable to services performed pursuant  
15           to 1 or more contracts described in subsection (d),  
16           and

17                   “(3) agrees to perform services for a particular  
18           amount of time or to complete a specific result or  
19           task.

20           “(c) ADDITIONAL SERVICE PROVIDER REQUIRE-  
21 MENTS WITH REGARD TO OTHERS.—For the purposes of  
22 subsection (a), the requirements of this subsection are met  
23 if the service provider—

24                   “(1) has a principal place of business,

1 “(2) does not primarily provide the service at a  
2 single service recipient’s facilities,

3 “(3) pays a fair market rent for use of the serv-  
4 ice recipient’s facilities, or

5 “(4) operates primarily with equipment not  
6 supplied by the service recipient.

7 “(d) WRITTEN DOCUMENT REQUIREMENTS.—For  
8 purposes of subsection (a), the requirements of this sub-  
9 section are met if the services performed by the service  
10 provider are performed pursuant to a written contract be-  
11 tween such service provider and the service recipient, or  
12 the payor, and such contract provides that the service pro-  
13 vider will not be treated as an employee with respect to  
14 such services for Federal tax purposes.

15 “(e) BUSINESS STRUCTURE AND BENEFITS RE-  
16 QUIREMENT.—For purposes of subsection (a), the require-  
17 ments of this subsection are met if the service provider—

18 “(1) conducts business as a properly constituted  
19 corporation or limited liability company under appli-  
20 cable State laws, and

21 “(2) does not receive from the service recipient  
22 or payor benefits that are provided to employees of  
23 the service recipient.

24 “(f) SPECIAL RULES.—For purposes of this sec-  
25 tion—

1           “(1) FAILURE TO MEET REPORTING REQUIRE-  
 2           MENTS.—If for any taxable year any service recipi-  
 3           ent or payor fails to meet the applicable reporting  
 4           requirements of section 6041(a) or 6041A(a) with  
 5           respect to a service provider, then, unless the failure  
 6           is due to reasonable cause and not willful neglect,  
 7           the safe harbor provided by this section for deter-  
 8           mining whether individuals are not employees shall  
 9           not apply to such service recipient or payor with re-  
 10          spect to that service provider.

11          “(2) BURDEN OF PROOF.—For purposes of  
 12          subsection (a), if—

13               “(A) a service provider, service recipient,  
 14               or payor establishes a prima facie case that it  
 15               was reasonable not to treat a service provider  
 16               as an employee for purposes of this section, and

17               “(B) the service provider, service recipient,  
 18               or payor has fully cooperated with reasonable  
 19               requests from the Secretary or his delegate,  
 20          then the burden of proof with respect to such treat-  
 21          ment shall be on the Secretary.

22          “(3) RELATED ENTITIES.—If the service pro-  
 23          vider is performing services through an entity owned  
 24          in whole or in part by such service provider, the ref-  
 25          erences to ‘service provider’ in subsections (b)

1 through (e) may include such entity, provided that  
 2 the written contract referred to in subsection (d) is  
 3 with such entity.

4 “(g) DETERMINATIONS BY THE SECRETARY.—For  
 5 purposes of this title—

6 “(1) IN GENERAL.—

7 “(A) DETERMINATIONS WITH RESPECT TO  
 8 A SERVICE RECIPIENT OR A PAYOR.—A deter-  
 9 mination by the Secretary that a service recipi-  
 10 ent or a payor should have treated a service  
 11 provider as an employee shall be effective no  
 12 earlier than the notice date if—

13 “(i) the service recipient or the payor  
 14 entered into a written contract satisfying  
 15 the requirements of subsection (d),

16 “(ii) the service recipient or the payor  
 17 satisfied the applicable reporting require-  
 18 ments of section 6041(a) or 6041A(a) for  
 19 all taxable years covered by the agreement  
 20 described in clause (i), and

21 “(iii) the service recipient or the payor  
 22 demonstrates a reasonable basis for deter-  
 23 mining that the service provider is not an  
 24 employee and that such determination was  
 25 made in good faith.



1           “(B) DETERMINATIONS WITH RESPECT TO  
2           A SERVICE PROVIDER.—A determination by the  
3           Secretary that a service provider should have  
4           been treated as an employee shall be effective  
5           no earlier than the notice date if—

6                   “(i) the service provider entered into a  
7                   contract satisfying the requirements of  
8                   subsection (d),

9                   “(ii) the service provider satisfied the  
10                  applicable reporting requirements of sec-  
11                  tions 6012(a) and 6017 for all taxable  
12                  years covered by the agreement described  
13                  in clause (i), and

14                  “(iii) the service provider dem-  
15                  onstrates a reasonable basis for determin-  
16                  ing that the service provider is not an em-  
17                  ployee and that such determination was  
18                  made in good faith.

19           “(C) REASONABLE CAUSE EXCEPTION.—  
20           The requirements of subparagraph (A)(ii) or  
21           (B)(ii) shall be treated as being met if the fail-  
22           ure to satisfy the applicable reporting require-  
23           ments is due to reasonable cause and not willful  
24           neglect.

1           “(2) CONSTRUCTION.—Nothing in this sub-  
 2           section shall be construed as limiting any provision  
 3           of law that provides an opportunity for administra-  
 4           tive or judicial review of a determination by the Sec-  
 5           retary.

6           “(3) NOTICE DATE.—For purposes of this sub-  
 7           section, the notice date is the 30th day after the ear-  
 8           lier of—

9                   “(A) the date on which the first letter of  
 10                  proposed deficiency that allows the service pro-  
 11                  vider, the service recipient, or the payor an op-  
 12                  portunity for administrative review in the Inter-  
 13                  nal Revenue Service Office of Appeals is sent,  
 14                  or

15                   “(B) the date on which the deficiency no-  
 16                  tice under section 6212 is sent.

17           “(h) DEFINITIONS.—For the purposes of this sec-  
 18           tion—

19                   “(1) SERVICE PROVIDER.—The term ‘service  
 20                  provider’ means any individual who performs a serv-  
 21                  ice for another person.

22                   “(2) SERVICE RECIPIENT.—Except as provided  
 23                  in paragraph (4), the term ‘service recipient’ means  
 24                  the person for whom the service provider performs  
 25                  such service.

1           “(3) PAYOR.—Except as provided in paragraph  
2           (4), the term ‘payor’ means the person who pays the  
3           service provider for the performance of such service  
4           in the event that the service recipient does not pay  
5           the service provider.

6           “(4) EXCEPTIONS.—The terms ‘service recipi-  
7           ent’ and ‘payor’ do not include any entity in which  
8           the service provider owns in excess of 5 percent of—

9                   “(A) in the case of a corporation, the total  
10                  combined voting power of stock in the corpora-  
11                  tion, or

12                   “(B) in the case of an entity other than a  
13                  corporation, the profits or beneficial interests in  
14                  the entity.

15           “(5) IN CONNECTION WITH PERFORMING THE  
16           SERVICE.—The term ‘in connection with performing  
17           the service’ means in connection or related to the op-  
18           eration of the service provider’s trade or business.

19           “(6) PRINCIPAL PLACE OF BUSINESS.—For  
20           purposes of subsection (c), a home office shall in any  
21           case qualify as the principal place of business if—

22                   “(A) the office is the location where the  
23                  service provider’s essential administrative or  
24                  management activities are conducted on a regu-

1           lar and systematic (and not incidental) basis by  
 2           the service provider, and

3           “(B) the office is necessary because the  
 4           service provider has no other location for the  
 5           performance of the essential administrative or  
 6           management activities of the business.

7           “(7) FAIR MARKET RENT.—The term ‘fair mar-  
 8           ket rent’ means a periodic, fixed minimum rental fee  
 9           which is based on the fair rental value of the facili-  
 10          ties and is established pursuant to a written agree-  
 11          ment with terms similar to those offered to unre-  
 12          lated persons for facilities of similar type and qual-  
 13          ity.”

14          (b) CLARIFICATION OF RULES REGARDING EVI-  
 15          DENCE OF CONTROL.—For purposes of determining  
 16          whether an individual is an employee under the Internal  
 17          Revenue Code of 1986 (26 U.S.C. 1 et seq.), compliance  
 18          with statutory or regulatory standards shall not be treated  
 19          as evidence of control.

20          (c) REPEAL OF SECTION 530(d) OF THE REVENUE  
 21          ACT OF 1978.—Section 530(d) of the Revenue Act of  
 22          1978 (as added by section 1706 of the Tax Reform Act  
 23          of 1986) is repealed.

1       (d) CLERICAL AMENDMENT.—The table of sections  
 2 for chapter 25 of such Code is amended by adding at the  
 3 end the following new item:

“Sec. 3511. Safe harbor for determining that certain individuals  
 are not employees.”

4       (e) EFFECTIVE DATES.—

5           (1) IN GENERAL.—The amendments made by,  
 6 and the provisions of, this section shall apply to  
 7 services performed after the date of enactment of  
 8 this Act.

9           (2) DETERMINATIONS BY SECRETARY.—Section  
 10 3511(g) of the Internal Revenue Code of 1986 (as  
 11 added by subsection (a)) shall apply to determina-  
 12 tions after the date of enactment of this Act.

13           (3) SECTION 530(d).—The amendment made by  
 14 subsection (c) shall apply to periods ending after the  
 15 date of enactment of this Act.

○